

**ORAL ARGUMENT SCHEDULED FOR APRIL 13, 2012
BEFORE ROGERS, GRIFFITH AND KAVANAUGH, JJ.**

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

EME Homer City Generation, L.P., <i>et al.</i> ,	}	Case No. 11-1302 (lead) and consolidated cases
Petitioners,		
v.	}	
Environmental Protection Agency, <i>et al.</i> ,		
Respondents.	}	

**RESPONDENT INTERVENORS' SUPPLEMENT TO
THE JOINT PROPOSAL CONCERNING FORMAT
FOR ORAL ARGUMENT**

The parties' Joint Proposal Concerning Format for Oral Argument dated March 2, 2012 (Doc. #1361745) stated that EPA expects to cede ten of its proposed 45 minutes for oral argument to Respondent Intervenors, who would advise the Court in writing of their proposed division of time and the arguing attorneys upon the filing of their final briefs. As described further below, Respondent Intervenors intend to divide their time as follows: four minutes to be used by the State and City Intervenors,¹ three minutes to be used by the Public

¹ The State and City Intervenors are the States of New York, Connecticut, Delaware, Illinois, Maryland, North Carolina, Rhode Island, and Vermont, the Commonwealth of Massachusetts, the District of Columbia, the Cities of (continued...)

Health Intervenors,² and three minutes to be used by the Industry Intervenors.³ In the alternative, if the Court is disinclined to allow three attorneys for Respondent Intervenors to present oral argument, Public Health Intervenors would be willing to cede their three minutes to the State and City Intervenors. Respondent Intervenors also set forth below the issues on which each group intends to present oral argument and the names of counsel for Respondent Intervenors who will argue. Respondent Intervenors believe that all other aspects of the Court's February 1, 2012 letter were addressed in the March 2, 2012 joint proposal and need not be addressed further herein.

Time. Assuming the Court adopts the time allotments proposed in the parties' March 2, 2012 Joint Proposal Concerning Format for Oral Argument, Respondent Intervenors propose that the Court allow the State and City Intervenors four minutes, the Public Health Intervenors three minutes, and the Industry

(...continued)

Bridgeport (CT), Chicago, New York, and Philadelphia, and the Mayor and City Council of Baltimore.

² The Public Health Intervenors are the American Lung Association, Clean Air Council, Environmental Defense Fund, Natural Resources Defense Council, and the Sierra Club.

³ The Industry Intervenors are Calpine Corporation, Exelon Corporation, and Public Service Enterprise Group, Inc.

Intervenors three minutes, in that order. In the alternative, Respondent Intervenors propose that the Court allow the State and City Intervenors seven minutes, and the Industry Intervenors three minutes, in that order.

Issues. Respondent Intervenors will be prepared to answer questions on all issues addressed in their briefs. The State and City Intervenors expect to address the following issues: (1) federal implementation plan issues; (2) “significant contribution” issues; and (3) interference with maintenance issues. The Public Health Intervenors expect to address the following issues: (1) emission budget stringency issues; and (2) Clean Air Act federalism issues. The Industry Intervenors expect to address the following issues: (1) “significant contribution” issues, including those associated with determination of state contributions and emission budgets, including IPM; and (2) compliance deadline issues.

Counsel. Simon Heller, counsel for the State of New York, will argue for State/City Intervenors. Sean H. Donahue, counsel for Environmental Defense Fund, will argue for Public Health Intervenors. Brendan K. Collins, counsel for Exelon Corporation, will argue for Industry Intervenors.

Pursuant to ECF-3(B) of this Court’s Administrative Order Regarding Electronic Case Filing (May 15, 2009), the undersigned counsel for Exelon Corporation hereby represents that the other parties listed in the signature blocks

below have consented to the filing of this supplement to the parties' Joint Proposal Concerning Format for Oral Argument .

CONCLUSION

Respondent Intervenors respectfully request that the Court adopt this supplement to the parties' Joint Proposal Concerning Format for Oral Argument .

March 16, 2012

Respectfully submitted,

/s/ Brendan K. Collins
Brendan K. Collins
Robert B. McKinstry, Jr.
Lorene L. Boudreau
BALLARD SPAHR LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
(215) 665-8500

Counsel for Exelon Corporation

James W. Rubin
SNR Denton US LLP
1301 K Street, NW, Suite 600
Washington, DC 20005
(202) 408-9146

*Counsel for Calpine Corporation and
Public Service Enterprise Group, Inc*

James B. Dougherty
Law Office of J.B. Dougherty
709 Third Street SW
Washington, D.C. 20024
(202) 488-1140

*Counsel for the City of Bridgeport,
Connecticut*

Stephen R. Patton
*Corporation Counsel of the
City of Chicago*
Benna Ruth Solomon
Deputy Corporation Counsel
Ronald D. Jolly
Senior Counsel
Graham G. McCahan
Assistant Corporation Counsel
City of Chicago
Department of Law
30 N. LaSalle St., Suite 800
Chicago, IL 60602
(312) 744-7764

Counsel for the City of Chicago

Shelley R. Smith
*City Solicitor for the
City of Philadelphia*
Patrick K. O'Neill
Scott J. Schwarz
The City of Philadelphia
Law Department
One Parkway Building
1515 Arch Street, 16th Floor
Philadelphia, PA 19102-1595
(215) 683-5170

Counsel for the City of Philadelphia

Michael A. Cardozo
*Corporation Counsel
for the City of New York*
Christopher King
Carrie Noteboom
Assistant Corporation Counsels
100 Church Street
New York, New York 10007
(212) 788-1235

Counsel for the City of New York

George Jepsen
*Attorney General of the
State of Connecticut*
Kimberly P. Massicotte
Matthew I. Levine
Scott N. Koschwitz
Assistant Attorneys General
55 Elm Street
P.O. Box 120
Hartford, Connecticut 06106
(860) 808-5250

Counsel for the State of Connecticut

Joseph R. Biden, III
*Attorney General of the
State of Delaware*
Valerie M. Satterfield
Deputy Attorney General
Delaware Department of Justice
102 West Water Street Third Floor
Dover, Delaware 19904
(302) 739-4636

Counsel for the State of Delaware

Lisa Madigan
*Attorney General of the
State of Illinois*
Matthew J. Dunn
Gerald T. Karr
James P. Gignac
Assistant Attorneys General
69 W. Washington St., 18th Floor
Chicago, Illinois 60602
(312) 814-0660

Counsel for the State of Illinois

Irvin B. Nathan
*Attorney General of the District of
Columbia*
Amy E. McDonnell
Deputy General Counsel
Office of the Attorney General
of the District of Columbia
District Department of the Environment
1200 First Street, NE, Seventh Floor
Washington, DC 20002
(202) 481-3845

Counsel for the District of Columbia

Douglas F. Gansler
*Attorney General of the
State of Maryland*
Mary E. Raivel
Assistant Attorney General
Office of the Attorney General
Maryland Department of the
Environment
1800 Washington Boulevard, Suite 6048
Baltimore, Maryland 21230
(410) 537-3035

Counsel for the State of Maryland

Martha Coakley
*Attorney General of the Commonwealth
of Massachusetts*
Frederick D. Augenstern
Assistant Attorney General
Environmental Protection Division
1 Ashburton Place, 18th Floor
Boston, Massachusetts 02108
(617) 963-2427

*Counsel for the Commonwealth of
Massachusetts*

Eric T. Schneiderman
*Attorney General of the
State of New York*
Barbara D. Underwood
Solicitor General
Cecelia C. Chang
Deputy Solicitor General
Simon Heller
Assistant Solicitor General
Andrew G. Frank
Michael J. Myers
Assistant Attorneys General
*Environmental Protection
Bureau of Counsel*
120 Broadway
New York, NY 10271
(212) 416-8025

Counsel for the State of New York

Roy Cooper
*Attorney General of the
State of North Carolina*
James C. Gulick
Senior Deputy Attorney General
Marc Bernstein
J. Allen Jernigan
Special Deputies Attorney General
North Carolina
Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602-0629
(919) 716-6600

Counsel for the State of North Carolina

Peter F. Kilmartin
*Attorney General of the
State of Rhode Island*
Gregory S. Schultz
Special Assistant Attorney General
150 South Main Street
Providence, Rhode Island 02903
(401) 274-4400, Ext. 2400

Counsel for the State of Rhode Island

William H. Sorrell
*Attorney General of the
State of Vermont*
Thea J. Schwartz
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609-1001
(802) 828-3186

Counsel for the State of Vermont

George A. Nilson
*City Solicitor of the
City of Baltimore*
William R. Phelan, Jr.
Chief Solicitor
Baltimore City
Department of Law
100 Holliday Street
Baltimore, Maryland 21202
(410) 396-4094

*Counsel for The Mayor and City
Council of Baltimore*

David Marshall
Clean Air Task Force
41 Liberty Hill Road
Building 2, Suite 205
Henniker, NH 03242
(603) 428-8114

*Counsel for American Lung Association
and Clean Air Council and Amicus for
Respondent American Thoracic Society*

David T. Lifland
Vickie L. Patton
Environmental Defense Fund
2060 Broadway, Suite 300
Boulder, CO 80302
(303) 447-7215
Sean H. Donahue
Donahue & Goldberg, LLP
2000 L St. NW, Suite 808
Washington, DC 30036
(202) 277-7085

*Counsel for Environmental Defense
Fund*

George Hays
236 West Portal Ave., No. 110
San Francisco, CA 94127
(415) 566-5414

Josh Stebbins
Sierra Club
50 F Street NW, Suite 800
Washington, DC 20001
(202) 675-6273

Counsel for Sierra Club

CERTIFICATE OF SERVICE

I, Brendan K. Collins, a member of the Bar of this Court, hereby certify that on March 16, 2012, I electronically filed the foregoing "Respondent Intervenors' Joint Proposal Concerning Format for Oral Argument" with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate ECF system.

/s/ Brendan K. Collins
Brendan K. Collins